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IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:

MERIDIAN RESTAURANTS UNLIMITED, LC;
LOVELOUD RESTAURANTS, LC;
AZM RESTAURANTS, LC; HR
RESTAURANTS, LC; MR RESTAURANTS, LC;
NDM RESTAURANTS, LC; and
NKS RESTAURANTS, LC,

Debtors-in-Possession.

Bankruptcy Case No. 23-20731-KRA
Bankruptcy Case No. 23-20732-KRA
Bankruptcy Case No. 23-20733-KRA
Bankruptcy Case No. 23-20736-KRA
Bankruptcy Case No. 23-20737-KRA
Bankruptcy Case No. 23-20738-KRA
Bankruptcy Case No. 23-20739-KRA

Chapter 11

Judge Kevin R. Anderson

**Jointly Administered Under
Bankruptcy Case No. 23-20731-KRA**

[Filed via ECF]

**NOTICE OF ADEQUATE ASSURANCE AND ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION WITH ASSET PURCHASE AGREEMENT WITH
SNAKE RIVER FOODS, INC. (MONTANA LOCATIONS)**

PLEASE TAKE NOTICE:

1. On July 25, 2023, the above-captioned Debtors (the “Debtors”)¹ filed with the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”) a motion [Docket No. 389] (the “Motion”) seeking entry of (a) an order (i) authorizing and approving bidding procedures (the “Bidding Procedures”), to be used in connection with the disposition (the “Transaction”) of substantially all of the Debtors’ assets either in whole or in parts (the “Assets”; (ii) scheduling an auction for the Assets (the “Auction”); (iii) scheduling a hearing to approve the Transaction (the “Sale Hearing”); (iv) authorizing certain procedures related to the Debtors’ assumption and assignment of executory contracts and unexpired leases (the “Assignment Procedures”) in connection with any Transaction, including notice to each non-Debtors counterparty (each, a “Counterparty”) to an executory contract or unexpired lease (collectively, the “Contracts”) of the Debtors’ proposed cure amounts to cure all monetary defaults under the Contracts (the “Cure Costs”), if any, and notice of potential assumption and assignment of certain Contracts (collectively, the “Proposed Assumed Contracts”) in connection with the Transaction; and (v) granting related relief.

2. On August 2, 2023, the Court entered the *Order: (I) Approving the Bidding Procedures; (II) Approving Procedures for Approving Stalking Horse Bidders and Granting Bid Protections; (III) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Related Notices; (IV) Scheduling the Bid Deadline, the Auction and Sale Hearing; (V) Approving the Form and Manner of Notice Thereof; and (VI) Granting Related Relief* [Docket No. 411] (the “Bidding Procedures Order”). Under the Bidding Procedures Order, the deadline for persons or entities to submit Bids (as defined in the Bidding

¹ Capitalized terms used herein but not defined herein will have the meanings ascribed such terms in the Bidding Procedures Order or Bidding Procedures.

Procedures) for the Debtors' Assets was on or before July 10, 2023, at 5:00 p.m. (prevailing Mountain Time) (the "Bid Deadline").

3. Pursuant to the Bidding Procedures Order, the Auction was held on September 19, 2023. On September 20, 2023, the Debtors filed a Report of Auction [Docket No. 525]. A copy of the Report of Auction is attached hereto as Exhibit 1.

4. The Sale Hearing will be held virtually on **Tuesday, September 26, 2023 at 1:30 p.m. (prevailing Mountain Time)**, before the Honorable Kevin Anderson, United States Bankruptcy Judge via Zoom.

5. Prior to the Bid Deadline, the Debtors received a qualified Bid from Snake River Foods, Inc. ("Winning Bidder") for the purchase of three (3) of the Debtors' restaurants located in Montana for a purchase price of \$600,000.00 in cash, plus an additional \$32,250 as payment for certain inventory and cash on hand (calculated at \$10,000 per restaurant for inventory and \$750 per restaurant for cash on hand), for a total cash bid of \$632,250. Burger King Company LLC is the Back-Up Bidder for these locations.

6. The Debtors will seek approval of the Winning Bidder's asset purchase agreement ("APA") at the Sale Hearing.

7. In connection with the Winning Bidder's APA, and in accordance with the Assumption and Assignment Procedures set forth in the Bidding Procedures Order, the Debtors intend to assume and assign to the Winning Bidder certain executory contracts or unexpired leases (collectively, the "Contracts") of the Debtors. Each of the Debtors' Contracts which will be assumed and assigned to the Winning Bidder is identified as follows:

Contract	Counterparty	Restaurant Location	Store Number(s)
Franchise Agreements	Burger King Company LLC	All Listed Below	All Listed Below

Freestyle Leases	Coca-Cola	All Listed Below	All Listed Below
Lease	Xenial	All Listed Below	All Listed Below
Lease	BK RE 7518 LLC	701 East Broadway, Missoula, MT 59802	7518
Lease	BK RE 9036 LLC	2601 North Reserve St., Missoula, MT 59808	9036
Lease	Neil P. Mussallem Trust	1341 N 1st St., Hamilton, MT 59840	22961

8. Pursuant to the Bidding Procedures Order, attached hereto as Exhibit 2 is the evidence of adequate assurance of future performance by the Winning Bidder under the Contracts identified herein. The evidence of adequate assurance of future performance includes the legal name of the proposed assignee, the proposed use of any leased premises, the proposed assignee’s financial ability to perform under the Contracts, and a contact person with the Winning Bidder who Contract Counterparties may contact if they wish to obtain further information regarding the Winning Bidder. The Winning Bidder will reasonably cooperate with the applicable Counterparty to provide any additional information reasonably requested by such Counterparty and/or respond to further inquiries from such Counterparty.

9. Any Counterparty to those Contracts identified herein that wishes to object to the assumption, assignment, and sale of the Contract based on the evidence of adequate assurance of future performance with respect to such Contract (each, an “Adequate Assurance Objection”), shall file with the Bankruptcy Court and serve on the Notice Parties an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **September 22, 2023 at Noon (prevailing Mountain Time)** (the “Adequate Assurance Objection Deadline”).

10. Any Adequate Assurance Objection must be served on the following Notice Parties: (i) the Debtors’ Advisors: (a) Hilco Corporate Finance, LLC, 401 N. Michigan, Suite

1630, Chicago, IL 60611, Attn Teri Stratton (tstratton@hilcofc.com) (b) Markus Williams Young & Hunsicker, LLC, 1775 Sherman Street, Suite 1950, Denver, Colorado 80203, Attn: James T. Markus (jmarkus@markuswilliams.com), counsel to Debtors; (c) Ray, Quinney & Nebeker, PC, 36 South State Street, Salt Lake City Utah 84111; Attn: Michael Johnson (mjohnson@rqn.com); (d) Michael Thatcher, B. Riley Financial 35 East 100 South, Suite 1609, Salt Lake City, Utah 84111 (mthatcher@brileyfin.com), the Debtors' Chief Restructuring Officer with a copy to Joseph Pegnia (jpegnia@brileyfin.com). (ii) Office of the United States Trustee, 405 South Main Street, Suite 300, Salt Lake City, Utah 84111, Attn: Peter J. Kuhn and Matthew J. Burne (peter.j.kuhn@usdoj.gov and matthew.burne@usdoj.gov); (iii) the Committee's Advisors: (a) Dundon Advisers, LLC, Ten Bank Street, Suite 1100, White Plains, NY 10606, Attn: Peter Hurwitz (ph@dundon.com) and Lee Rooney (lr@dundon.com), and (b) Foley & Lardner, LLP, 95 State Street, Suite 2500, Salt Lake City, UT 84111, Attn: Michael Small (msmall@foley.com) and Ellen Ostrow (eostrow@foley.com); (iv) counsel to BKC: Venable LLP, 100 S.E. Second Street, Suite 4400, Miami, FL 33131, Attn: Paul J. Battista (pjbattista@venable.com) and Glenn D. Moses (gmoses@venable.com) (collectively, the "Notice Parties").

11. The Bidding Procedures Order requires that the Debtors and a Counterparty that has filed an Adequate Assurance Objection first confer in good faith to attempt to resolve the Adequate Assurance Objection without Bankruptcy Court intervention. If the parties are unable to consensually resolve an Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection, and all issues of adequate assurance of future performance, shall be determined by the Court at the Sale Hearing.

12. If a Counterparty fails to timely file with the Court and serve on the Notice Parties an Adequate Assurance Objection, (i) the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Contract (unless the Counterparty has filed a timely Cure Objection or Assignability Objection with respect to the Proposed Assumed Contract) to the applicable Winning Bidder (and Backup Bidder if the Backup Bidder becomes the Winning Bidder) and forever shall be barred from asserting any objection with regard to such assumption, assignment, and sale, and (ii) the applicable Winning Bidder (and Backup Bidder if the Backup Bidder becomes the Winning Bidder) shall be deemed to have provided adequate assurance of future performance with respect to the applicable Proposed Assumed Contract in accordance with Bankruptcy Code section 365(f)(2)(B), notwithstanding anything to the contrary in the Proposed Assumed Contract, or any other document.

13. The inclusion of a Contract herein shall NOT constitute or be deemed a determination or admission by the Debtors, the applicable Winning Bidder(s) (and Backup Bidder(s) if any Backup Bidder becomes a Winning Bidder), or any other party in interest that such Contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

14. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract listed herein. **The Debtors' inclusion of any Contract shall not be a guarantee that such Contract ultimately will be assumed or assumed and assigned.** This Notice shall be without prejudice to the Winning Bidder's rights (including any Backup Bidder's rights, if the Backup Bidder becomes the Winning Bidder), if any, under the asset purchase agreement, to subsequently exclude Proposed Assumed Contracts from the assumption or assignment prior to the closing of the Transaction.

15. The Debtors' assumption and/or assignment of a Contract is subject to approval by the Bankruptcy Court and consummation of one or more Transactions. Absent consummation of the respective Transaction and entry of an order approving the assumption and/or assignment of the applicable Contracts, the Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtors.

DATED: September 20, 2023.

Respectfully submitted,

RAY QUINNEY & NEBEKER P.C.

By: /s/ Michael R. Johnson
Michael R. Johnson (7070)
David H. Leigh (9433)
Elaine A. Monson (5523)
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Counsel for the Debtors-In-Possession

-- and --

MARKUS WILLIAMS YOUNG &
HUNSICKER LLC

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Email: lbryan@markuswilliams.com

Counsel for the Debtors-In-Possession

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2023, the foregoing **NOTICE OF ADEQUATE ASSURANCE AND ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH ASSET PURCHASE AGREEMENT WITH SNAKE RIVER FOODS, INC. (MONTANA LOCATIONS)** was electronically filed with the Clerk of Court using CM/ECF system, and therefore served via CM/ECF on all parties and counsel of record in these chapter 11 cases, and the foregoing Notice with exhibits were served on the Counterparties via electronic mail as follows:

Coca-Cola
E-mail: agouzoun@coca-cola.com

Burger King Company LLC
E-mail: pjbattista@venable.com
E-mail: gmoses@venable.com
E-mail: TBeckett@parsonsbehle.com

BK RE 7518 LLC
E-mail: pat.ryan@ryanrestaurantcorp.com

BK RE 9036 LLC
E-mail: pat.ryan@ryanrestaurantcorp.com

Neil P. Mussallem Trust
E-mail: lem@garlic.com

Xenial, Inc. f/k/a SICOM Systems, Inc.
E-mail: dchandler@aklawfirm.com

/s/ Matthew Faga
For Markus Williams Young & Hunsicker LLC

EXHIBIT 1

Report of Auction

Michael R. Johnson (7070)
David H. Leigh (9433)
Elaine A. Monson (5523)
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Counsel for the Debtor-In-Possession

James T. Markus (*pro hac vice*)
Matthew T. Faga (*pro hac vice*)
Lacey S. Bryan (*pro hac vice*)
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Email: mfaga@markuswilliams.com
Email: lbryan@markuswilliams.com

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:

MERIDIAN RESTAURANTS UNLIMITED, LC;
LOVELOUD RESTAURANTS, LC; AZM
RESTAURANTS, LC; HR RESTAURANTS, LC;
MR RESTAURANTS, LC; NDM
RESTAURANTS, LC; and NKS RESTAURANTS,
LC,

Debtors-in-Possession.

Bankruptcy Case No. 23-20731-KRA
Bankruptcy Case No. 23-20732-KRA
Bankruptcy Case No. 23-20733-KRA
Bankruptcy Case No. 23-20736-KRA
Bankruptcy Case No. 23-20737-KRA
Bankruptcy Case No. 23-20738-KRA
Bankruptcy Case No. 23-20739-KRA

Chapter 11
Judge Kevin R. Anderson

**Jointly Administered Under
Bankruptcy Case No. 23-20731-KRA**

[Filed via ECF]

REPORT OF AUCTION

Debtors Meridian Restaurants Unlimited, L.C. ("Meridian"), Loveloud Restaurants, L.C. ("Loveloud"), AZM Restaurants, L.C. ("AZM"), HR Restaurants, L.C. ("HR"), MR Restaurants, L.C. ("MR"), NDM Restaurants, L.C. ("NDM"), and NKS Restaurants, L.C. ("NKS") (collectively, the "Debtors"), debtors and debtors-in-possession in the above-captioned jointly administered chapter 11 case, by and through their undersigned counsel, hereby file this *Report*

of Auction in connection with the Auction held on September 19, 2023 (the “Auction”), and state as follows:

1. On August 2, 2023, the Court entered the Order: (I) *Approving the Bidding Procedures*; (II) *Approving Procedures for Approving Stalking Horse Bidders and Granting Bid Protections*; (III) *Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Related Notices*; (IV) *Scheduling the Bid Deadline, the Auction and Sale Hearing*; (V) *Approving the Form and Manner of Notice Thereof*; and (VI) *Granting Related Relief* (Docket No. 411) (the “Bidding Procedures Order”). The Bidding Procedures Order approved bidding procedures (the “Bidding Procedures”) to govern the process for the sale at the public auction of substantially all the Debtors’ assets (the “Auction”).

2. Pursuant to the Bidding Procedures Order (Docket No. 411, p. 9, at ¶ 13), on September 6, 2023, the Debtors filed and served the Notice of Sale, Bidding Procedures, Auction, and Free and Clear Sale Hearing (“Notice of Auction”). See *Notice of Auction Sale*, Docket No. 460; *Certificate of Service*, Docket No. 498.

3. Pursuant to the Bidding Procedures Order and Notice of Auction, the Auction was held and concluded on September 19, 2023. The Auction began at 10:00 a.m. prevailing Mountain Time and continued through approximately 9:45 p.m.

4. The Debtors entered the Auction with ninety-one (91) operating restaurants. At the conclusion of the Auction, sixty-seven (67) restaurants will be sold subject to Court approval at the Sale Hearing. There were no acceptable Qualified Bids at the Auction for the remaining twenty-four (24) restaurants at this time.¹

¹ Late in the Auction, Burger King Company informed the Debtors that it might be interested in acquiring three (3) of the Debtor’s restaurants in Wyoming, those restaurants bearing Store Nos. 2178, 9507, and 17794. The Debtors and BKC continue to explore the possible sale of these restaurants and, if they come to an agreement prior to the

5. Prior to the conclusion of the Auction, the Debtors, in consultation with (i) the Chief Restructuring Officer, Michael Thatcher, (ii) Debtors' counsel, (iii) Hilco Corporate Finance, LLC ("Hilco"), the Debtors' Investment Banker in the Bankruptcy Case, (iv) Burger King Company LLC ("BKC"), and (v) the Official Committee of Unsecured Creditors (the "Creditors' Committee") (collectively, the "Consultation Parties"), reviewed and considered each Qualified Bid and determined the Winning Bid, Winning Bidder and the Back-Up Bidder, if any. *Bidding Procedures Order*, Ex. 1, Docket No. 411, pp. 9-10 at Sec. I.

6. After consultation with the Consultation Parties, the Debtors accepted the following bids and in their reasonable business judgment designated such as "Winning Bids" under the Bidding Procedures Order:

- a. Arizona: With respect to Store Numbers 2982, 6315, 6787, 6879, 9644, 11383 and 14184 in Arizona (the "KRAF Locations"), **KRAF, Inc.** is the Winning Bidder for the KRAF Locations at a cash purchase price of \$7,000,000. The Debtors had an initial stalking horse bid of \$7,000,000 (including a provision for \$1,500,000 of the purchase price to be placed into a Construction Holdback escrow to address hurricane damage sustained at the restaurant located at 415 S. State Route 90 Bypass, Sierra Vista, Arizona) from KRAF, Inc.
- b. Kansas/Nebraska: With respect to Store Numbers 3597, 4582, 5492, 5880, 7061, 10218, 10701, 14234, 21514, 25701, 26116 in Kansas, and Store Numbers 4247, 5167, 6677, 12128, and 17904 in Nebraska (together, the "Kansas King Locations"), **Kansas King, Inc.** is the Winning Bidder for the Kansas King Locations at a cash purchase price of \$700,000, plus additional support funding as

September 25, 2023 sale hearing, will ask the Court to approve that additional sale as well. As a result, the Auction was not formally concluded as of filing this Notice of Auction.

agreed to be provided by BKC in the amount of \$1,508,948, for a total cash bid of \$2,208,948. Kansas King, Inc. is also assuming the store-level accrued PTO for the store-level employees at the Kansas King Locations. Kansas King, Inc. is expressly not assuming any contracts/leases involving Varilease Financial Inc.

- c. Minnesota/North Dakota: With respect to Store Numbers 4934 and 11345 in Minnesota, Store Number 25583 in Montana, and Store Numbers 1589, 2209, 8836, 9915, 11084, 11142, 22109, 22687, and 23092 in North Dakota (together, the “DRP Locations”), **Dakota Restaurant Partners Inc.** is the Winning Bidder for the DRP Locations at a cash purchase price of \$3,275,000, plus an additional \$129,000 as payment for certain inventory and cash on hand (calculated at \$10,000 per restaurant for inventory and \$750 per restaurant for cash on hand), for a total cash bid of \$3,404,000.
- d. Montana (three locations): With respect to Store Numbers 7518, 9036, and 22961 in Montana (together, the “SRF Locations”), **Snake River Foods, Inc.** is the Winning Bidder for the SRF Locations at a cash purchase price of \$600,000, plus an additional \$32,250 as payment for certain inventory and cash on hand (calculated at \$10,000 per restaurant for inventory and \$750 per restaurant for cash on hand), for a total cash bid of \$632,250. Snake River Foods, Inc. is also assuming the store-level accrued PTO for the store-level employees at the SRF Locations.
- e. Montana (remaining locations): With respect to Store Numbers 1666, 2195, 5165, 6608, 8411, 9084, 9257, 11413, 13158, 13293, 17433 and 26151 in Montana (together, the “BKC Montana Locations”), **Burger King Company LLC** is the

Winning Bidder for the BKC Montana Locations at a cash purchase price of \$1,375,000. As part of its bid for the BKC Montana Locations, BKC has additionally agreed to waive the cure amounts for royalties and advertising fees under the franchise agreements for the BKC Montana Locations, and has also agreed to waive all post-petition royalties and advertising fees under the franchise agreements for the other stores operating by Debtor HR. BKC is also assuming the store-level accrued PTO for the store-level employees at the BKC Montana Locations.

- f. Utah: With respect to Store Numbers 7233, 7837, 9601, 9661, 9949, 9960, 10457, 10484, 10511, 10519, 10625, 12902, 14035, 24378, 24943, 25282, and 25484 in Utah (together, the “BKC Utah Locations”), **Burger King Company LLC** is the Winning Bidder for the BKC Utah Locations at a cash purchase price of \$3,002,000. As part of its bid for the BKC Utah Locations, BKC has additionally agreed to waive the cure amounts for royalties and advertising fees under the franchise agreements for the BKC Utah Locations, and has also agreed to waive all post-petition royalties and advertising fees under the franchise agreements for the other stores operating by Debtor MR. BKC is also assuming the store-level accrued PTO for the store-level employees at the BKC Utah Locations.

7. BKC has approved all Winning Bidders as potential buyers/franchisees under the applicable BKC Franchise Agreements.

8. The Debtors, in their reasonable business judgment and after consultation with the Consulting Parties, agreed that **Burger King Company LLC** is the bound Back-Up Bidder for the SRF Locations, on the same terms and conditions as the Winning Bids for such locations.

9. Pursuant to the Winning Bids and the Backup Bids, and except as specifically stated herein, any Cure Costs for assumed and assigned contracts and leases shall be paid by the buyers, and the Debtors estimate that such Cure Amount total approximately \$6,411,232 for all sold restaurant locations.

10. The Debtors are providing this Notice to counterparties of any assumed and assigned executory contracts and unexpired leases subject to the Winning Bids and Back-Up Bids.

11. The Bidding Procedures Order provides that the Sale Hearing will be held virtually on **Tuesday, September 26, 2023 at 1:30 p.m. (prevailing Mountain Time)**, before the Honorable Kevin Anderson, United States Bankruptcy Judge, via Zoom hearing. At the Sale Hearing, the Debtors will request that the Bankruptcy Court enter an order approving the sales of the purchased assets to the Winning Bidders as described herein.

DATED September 20, 2023.

Respectfully submitted,
RAY QUINNEY & NEBEKER P.C.

By: /s/ Michael R. Johnson
Michael R. Johnson (7070)
David H. Leigh (9433)
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-- and --

MARKUS WILLIAMS YOUNG &
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Email: lbryan@markuswilliams.com

Counsel for the Debtors-In-Possession

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2023, the foregoing **REPORT OF AUCTION** was electronically filed with the Clerk of Court using CM/ECF system, and therefore served via CM/ECF on all parties and counsel of record in these chapter 11 cases.

/s/ Serina Schaefer

For Markus Williams Young & Hunsicker LLC

EXHIBIT 2

Adequate Assurance of Winning Bidder

Statement of Adequate Assurance

Snake River Foods, Inc.

Snake River Foods, Inc., (SRF) was founded in 1987 by the Nunamaker Family, which has been operating Burger King Restaurants since 1978. The Nunamaker Family currently operates two highly successful Burger Kings in Idaho's Treasure Valley (one opened in 1987; the other in 1996), with two more under development.

SRF operates under a strongly owner-involved model, and as a small operator, carries very little in back office costs. This owner-involved model has resulted in exceptional operational and financial results, resulting in them being graded as a "A" operator (the highest possible ranking) for the past year, and with year-to-date sales having improved by 10.6% due to targeted marketing campaigns and a guest-focused restaurant environment which has resulted in stable to growing traffic numbers (up 5.2% in September alone).

SRF is in a strong financial position, with no existing long-term debt aside from that which will be associated with the acquisition of the Montana portfolio, and with approximately \$800,000 cash on hand. SRF is prepared to immediately (within six months from acquisition) invest \$100,000 into the Montana portfolio to improve operations and sales.

As a measure of commitment to improving the performance of its Montana portfolio, one of the family members currently involved in operations in Idaho (Mara Nunamaker) will permanently relocate to Missoula upon finalization of the acquisition to oversee operations and direct necessary capital improvements in the restaurants, with the goal of matching the Idaho portfolio's financial performance within two years.

Please contact Ted Nunamaker (ted@fastsnakefoods.com / 208-505-8807) with any questions.